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Before the

FEDERAL COMMUNICATIONS COMMISSION

NOV 19 1993

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Applications of)	MM Docket No. 93-75
TRINITY BROADCASTING OF FLORIDA,)	
INC.)	BRCT-911001LY
For Renewal of License of)	
Television Station WHFT(TV))	
Miami, Florida)	
GLENDAL E BROADCASTING COMPANY)	BPCT-911227KE
For Construction Permit)	
Miami, Florida)	

To: Hon. Joseph Chachkin
Administrative Law Judge

**OPPOSITION TO
REQUESTED RULING RE ORDER OF WITNESSES**

Trinity Broadcasting of Florida, Inc. ("TBF"), by its counsel, hereby opposes the requested ruling concerning order of witnesses sought by Glendale Broadcasting Company ("Glendale") in its "Response to Witness Notification" filed November 18, 1993. In support hereof, TBF respectfully states as follows.

A. Background

1. Proper resolution of the order of witness presentation must take account of the significant differences between the two parties' situations in terms of evidentiary burden and direct case initiative.

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2. On the Trinity Broadcasting Network and National Minority TV, Inc. qualifying issues ("Trinity Issues"), while Glendale has the burden of proceeding, TBF has the burden of proof.^{1/} TBF, on the direct case exchange date (November 12), submitted direct case written testimony from 16 witnesses on the Trinity Issues (TBF Exhibits 101-116). Glendale, on the other hand, submitted no testimony (merely documents) and gave no notice that it would call any adverse witness as part of its direct case.^{2/} Having left the direct case initiative entirely to TBF, Glendale later simply noticed all of Trinity's direct case witnesses for cross-examination.^{3/} In short, while TBF is offering direct case testimony under the Trinity Issues, Glendale is not.

3. On the Glendale qualifying issue ("Glendale Issue"), TBF has both the burden of proceeding and the burden of proof.^{4/} TBF, on the direct case exchange date, submitted deposition testimony from two witnesses (Edward Rick, III and Barry L. March) and gave notice that it will call four other persons (David A. Gardner, Harold Etsell, Jr., Lee H. Sandifer,

^{1/} Hearing Designation Order, FCC 93-148, released April 7, 1993, ¶54.

^{2/} See Letter of John J. Schauble dated November 12, 1993 (copy appended as Tab 1).

^{3/} See Letter of Lewis I. Cohen dated November 16, 1993 (copy appended in Tab 2).

^{4/} Memorandum Opinion and Order, FCC 93M-469, released July 15, 1993, p. 8 (ALJ).

and George F. Gardner in that order) as adverse witnesses as part of its direct case under that issue.^{5/} Glendale submitted direct written testimony from only two witnesses (George F. Gardner and David A. Gardner; Glendale Exhibits 208 and 209), then later noticed TBF's other direct case witnesses (Rick, March, Etsell, and Sandifer) for cross-examination (see Tab 2).

4. Now, although Glendale has offered no direct case witnesses under the Trinity Issues, it asks for the right to dictate the order in which TBF presents its direct case. Alternatively, Glendale urges that if Trinity is allowed to control the order of witnesses under the Trinity Issues, Glendale must have the right to control the order of witnesses under the Glendale Issue. The common principle, says Glendale, is that each party would control the order of witnesses on the issue(s) specified against that party. According to Glendale, "consistency" requires such a procedure. Response to Witness Notification, p. 3.

B. Argument

5. Glendale's proposal has no merit, because it ignores the very important procedural and practical differences between the parties' respective situations. It is preposterous for Glendale to suggest that it control the order of witnesses under

^{5/} See Letter of Nathaniel F. Emmons dated November 12, 1993 (copy appended as Tab 3).

the Trinity Issues when none of those witnesses are part of Glendale's direct case.^{6/} The only direct case witnesses are TBF's witnesses. Although Glendale had the burden of proceeding, it chose not to meet its burden with witnesses. Hence, it cannot now claim the right to specify the order of testimony. That right clearly belongs to TBF as the only party offering direct case witnesses under the issue.^{2/}

6. With respect to the Glendale Issue, there are several compelling reasons why the order of witnesses is properly a matter for TBF, not Glendale, to decide. First, on this issue (unlike the Trinity Issues) TBF has the burden of proceeding. Second, unlike Glendale on the Trinity Issues, TBF has met its burden of proceeding on this issue by presenting direct case witnesses (six of them); it has not forfeited that field to Glendale. Third, TBF's direct case under this issue encompasses

^{6/} On November 16, after the direct case exchange date, Glendale noticed for "cross-examination," among others, several persons from whom TBF submitted no testimony. See Tab 2. TBF has opposed Glendale's effort to "cross-examine" those persons. See TBF's Opposition to Witness Notification, filed November 18, 1993. Even if the Presiding Judge requires those persons to appear for "cross-examination," however, they would not be Glendale direct case witnesses, since Glendale did not designate them as such and call for their appearance on the direct case exchange date.

^{2/} In other words, and simply put, Glendale has only asked to "cross-examine" TBF's witnesses. By definition, "cross-examination" occurs only after the sponsoring party has presented the witnesses for direct testimony. The sponsoring party thus determines the order in which the direct testimony is offered, and the cross-examination then proceeds in that order.

both of Glendale's witnesses (plus four more), whereas Glendale's direct case omits four of TBF's six direct case witnesses; under these circumstances, to let Glendale decree the order of testimony would be to let the tail wag the dog. Fourth, under the normal practice of following docket order, TBF would present its direct case first and in the witness sequence of its choice.

7. Apart from these significant procedural considerations, all of which support TBF's position, a paramount concern is the development of an organized and understandable hearing record. On the Glendale Issue, TBF strongly believes that its proposed order of witnesses is very important in that regard. The focal witness under the Glendale issue is George Gardner, who is both the controlling principal of Glendale and the person who signed the FCC applications that contained allegedly false or misleading statements. In TBF's view, it is essential that before George Gardner is examined on what he knew and when he knew it, all of the relevant background facts and circumstances be established on the record. Otherwise, much of the examination of George Gardner will take place in a vacuum, and the record will materially suffer. Moreover, without benefit of having first heard the full background of relevant facts and circumstances, the Presiding Judge will have limited ability to gauge credibility and demeanor as George Gardner testifies. It is clear from discovery that many of the important background

facts must be established by other witnesses, and that is why, in the interest of an orderly record, those witnesses must logically be heard first.^{8/}

8. As a final matter, in the absence of compelling countervailing considerations, the party having the burden of proof should be entitled to present its direct case witnesses in the order it believes will best meet that burden. The burden of proof is already an evidentiary disadvantage for the party bearing it. It would be plainly unfair to saddle that party with the double disadvantage of not only having to prove the case, but having to prove the case on terms dictated by the opposing party. Here, TBF has been assigned the burden of proof on both the Trinity Issues and the Glendale Issue. Glendale has the burden on neither. This alone requires that Glendale's proposal be rejected and that TBF be allowed to decide the order of its direct case witnesses under both issues.

^{8/} In this respect the Trinity Issues are materially different. As the Hearing Designation Order makes clear the focal point of those issues is the role that Mrs. Jane Duff has had as an employee of TBN while serving as a Director of NMTV and the key principals' state of mind concerning that role. (See TBF Exhibit 101, pp. 61-70.) Thus, the background and circumstances that are most relevant to these issues are the very facts of Mrs. Duff's role, which TBF logically proposes to present first through the most knowledgeable witness, Mrs. Duff herself.

C. Conclusion

9. In sum, there is simply no reasonable basis for adopting Glendale's suggestion. Glendale presented no direct case testimony under the Trinity Issues and (compared to TBF) only limited direct case testimony under the Glendale Issue. Glendale does not have the burden of proceeding under the Glendale Issue and, more important, does not have the burden of proof under either issue. Moreover, under the Glendale Issue, development of an orderly hearing record for a full understanding of the testimony requires that George Gardner testify last (as TBF specified in its direct case exchange) rather than first (as Glendale would have it). For all of these reasons, the sequence of direct case witnesses under both issues is properly for TBF, not Glendale, to decide.

10. If (and only if) the Presiding Judge does not agree with this position, then TBF would concur with Glendale's suggestion that each party control the order of witnesses on the issue(s) specified against that party. Response to Witness Notification, p. 3. This would be required not only because of the compelling logic of the order of witnesses TBF has presented under the Trinity Issues (note 8 supra), but for the practical reason that TBF's witnesses must travel cross-country to testify and many travel arrangements that have already been made would be difficult to change. However, for the reasons indicated, TBF respectfully submits that the proper course would be for the

witnesses under both the Glendale and the Trinity Issues to appear in the order set forth in TBF's direct case exhibit exchange.

Respectfully submitted,

TRINITY BROADCASTING OF FLORIDA, INC.

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November 19, 1993

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November 12, 1993

VIA HAND DELIVERY

Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 226
Washington, D.C. 20554

RE: Miami, Florida Television Proceeding
MM Docket No. 93-75

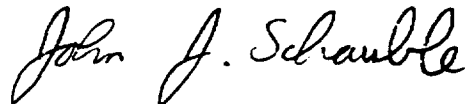
Dear Judge Chachkin:

On behalf of Glendale Broadcasting Company, we now submit a copy of its written direct case pursuant to Your Honor's Order, FCC 93M-674 (released October 26, 1993).

Counsel for the other parties to the proceeding are being served by hand with copies of these exhibits.

Should you have any questions concerning this matter, kindly communicate directly with this office.

Respectfully submitted,



John J. Schauble

cc: /Howard A. Topel, Esq. (via hand delivery, w/encl.)
Colby M. May, Esq. (via hand delivery, w/encl.)
James Shook, Esq. (via hand delivery, w/encl.)
David Honig, Esq. (via hand delivery, w/encl.)

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November 16, 1993

Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 226
Washington, D.C. 20554

RE: Miami, Florida Television Proceeding
MM Docket No. 93-75

Dear Judge Chachkin:

Glendale Broadcasting Company (Glendale) now requests that Trinity Broadcasting of Florida, Inc. (TBF) make the following witnesses available for cross-examination at the hearing scheduled to commence on November 29, 1993:

- 1) Michael S. Everett
- 2) Teresa Robin Downing
- 3) Lindee C. Dressler
- 4) Christopher A. Holt
- 5) Pearl Jane Duff
- 6) Edward Victor Hill
- 7) Armando Ramirez
- 8) Paul F. Crouch
- 9) Colby M. May
- 10) Phillip David Espinoza
- 11) Phillip Russell Aguilar
- 12) Norman G. Juggert
- 13) James G. McClellan
- 14) Christopher F. Warner, Sr.
- 15) Shirobu Sakuarai Chrisman
- 16) Brian K. Mitchell
- 17) Timothy Greenridge
- 18) En Young Park

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- 19) Mora McDonald
- 20) David Scott Morris
- 21) Edward Rick, III
- 22) Barry L. March
- 23) Allan Brown
- 24) Terrence M. Hickey
- 25) Phillip A. Crouch
- 26) Warren Benton Miller
- 27) George Horvath, Jr.
- 28) Matthew Crouch
- 29) Charlene Williams

The first twenty witnesses are sponsors of written direct case testimony offered by TBF. Mr. Everett, Ms. Downing, Ms. Dressler, and Mr. Holt have offered testimony concerning TBF's claim to a renewal expectancy. The next sixteen witnesses listed have offered testimony relating to the qualifications issues specified against TBF. In the case of Phillip Russell Aguilar, the testimony being offered is the transcript of his deposition.

TBF has offered portions of the deposition testimony of Messrs. Rick and March (TBF Exhibits 201 and 202). The Mass Media Bureau has offered affidavits of Mr. Rick and Mr. March as exhibits (MMB Exhibits 540 and 541). Glendale requests that TBF and/or the Mass Media Bureau make Mr. Rick and Mr. March available for cross-examination.

Although the last six persons identified above are not sponsoring written direct case testimony to be offered by TBF, their testimony is clearly relevant and as officers and/or employees of TBN or NMTV, they should be required to appear for cross-examination. Charlene Williams has just retired from TBN, and it is urged for purpose of requiring her testimony, she should be treated as a TBF employee.

Allan Brown is an officer of NMTV. He is a signatory to an Agreement to Provide Business Services entered into between Trinity Broadcasting Network and NMTV. He also has been a signatory to various NMTV bank accounts. His deposition reflects that he has knowledge

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of facts which are relevant to the designated issues against TBF.

Phillip Crouch has been an officer of NMTV. He has been a signatory to various NMTV bank accounts. His deposition reflects he has knowledge of facts which are relevant to the designated issues against TBF.

Phillip Crouch has been an officer of NMTV. He has been a signatory to various NMTV bank accounts. His deposition reflects he has knowledge of facts which are relevant to the designated issues against TBF.

Matthew Crouch has been an officer of NMTV. He has been a signatory to various NMTV bank accounts. His deposition reflects that he has knowledge of facts which are relevant to designated issues against TBF.

Charlene Williams has been an officer of NMTV. She has been a signatory of various NMTV bank accounts. Her deposition reflects she has knowledge of facts which are relevant to the designated issues against TBF.

George Horvath, Jr. serves as Low Power Coordinator for NMTV, although he is an employee of TBN. He also functions as Low Power Coordinator for TBN. Mr. Horvath receives no remuneration from NMTV. He provides substantial engineering support services to NMTV. His deposition reflects that he has knowledge of facts which are relevant to the designated issues against TBF.

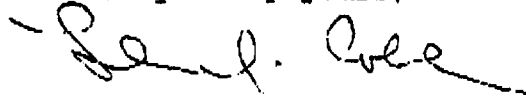
Warren Benton Miller is Vice President for Engineering for TBN. TBN's engineering department provides virtually all of NMTV's engineering support services. Mr. Miller receives no compensation from NMTV, although he personally provides substantial engineering services for NMTV. His deposition reflects that he has knowledge of facts which are relevant to the designated issues against TBF.

Terrence M. Hickey is an officer of NMTV and has been a signatory to various NMTV bank accounts. He is a signatory to an Agreement between NMTV and TBN regarding payment of a \$4,030,442 Note from NMTV to TBN.

Honorable Joseph Chachkin
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His deposition reflects that he has knowledge of facts
which are relevant to the designated issues against TBF

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lewis I. Cohen", with a long horizontal flourish extending to the right.

Lewis I. Cohen

cc: Howard A. Topel, Esq. (via fax and mail)
Colby M. May, Esq. (via fax and mail)
James Shook, Esq. (via hand delivery)
David E. Honig, Esq. (via fax and mail)

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November 12, 1993

HAND-DELIVERED

Hon. Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W. -- Room 246
Washington, D.C. 20554

Re: MM Docket No. 93-75
Miami, Florida

Dear Judge Chachkin:

Enclosed herewith is a set of the written direct case hearing exhibits being exchanged in the above-referenced proceeding by Trinity Broadcasting of Florida, Inc. ("TBF"), Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("TBN"), and National Minority Television, Inc. ("NMTV"). These exhibits are also being delivered today to counsel for all parties.

In addition to these written exhibits, TBF hereby gives notice of its intention to call the following persons (in the following order) to testify as adverse witnesses as part of TBF's direct case on the special issue involving the basic qualifications of Glendale Broadcasting Company ("Glendale"). These persons are presently or formerly associated with Raystay Company, whose conduct is the subject of that issue. They are adverse witnesses because Raystay Company is controlled by George F. Gardner, who is also the controlling principal of Glendale.

- (1) David A. Gardner
- (2) Harold Etsell, Jr.
- (3) Lee H. Sandifer
- (4) George F. Gardner

David A. Gardner, the son of George F. Gardner, was directly involved for Raystay Company ("Raystay") in activities

Hon. Joseph Chachkin
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concerning the LPTV construction permits and is the person who worked with FCC counsel in preparing the LPTV extension applications that are the subject of the designated misrepresentation/lack of candor issue.

Harold Etsell, Jr. was a senior member of Raystay's management and the person who had responsibility for developing a business plan for the LPTV construction permits. Certain of the critical representations made by Raystay in the LPTV extension applications relate to his activities.

Lee H. Sandifer, Raystay's Vice President and Chief Financial Officer, was directly involved in negotiations with other parties for the sale of Raystay's LPTV authorizations, and in negotiations with Greyhound Financial Corporation that resulted in lender-imposed restrictions on Raystay's ability to construct LPTV stations. Mr. Sandifer also reviewed the representations made in Raystay's LPTV extension applications before they were first filed.

George F. Gardner, the President and controlling owner of both Raystay and Glendale, oversaw all of Raystay's LPTV activities, expressly authorized and/or directly participated in efforts to sell the LPTV authorizations, and personally reviewed and signed the LPTV extension applications that allegedly contained misrepresentations and/or lack candor.

The enclosed written exhibits are organized as follows:

Prefix. The prefix used for all exhibits is "TBF."

Grouping. The exhibits are grouped by issue. Volumes I-A through I-E, consisting of TBF Exhibits 1-36, relate to the standard comparative issue (including renewal expectancy). Volumes II-A through II-F, consisting of TBF Exhibits 101-116, relate to the basic qualifications issues involving TBF, TBN, and NMTV. Volumes III-A through III-D, consisting of TBF Exhibits 201-260, relate to the basic qualifications issue involving Glendale.

Numbering/Lettering. Exhibits are numbered sequentially, except that numbers 37-100 and 117-200 are reserved and presently unused. Attachments to exhibits are lettered sequentially within each exhibit starting with the letter "A." Exhibits are marked with white number tabs, while attachments are marked with yellow letter tabs.

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Indexing. Each volume of exhibits contains an index of the exhibits in that volume. In addition, a master index of all exhibits is enclosed with this letter.

TBF Exhibit 31 (Declaration of Michael S. Everett Re: Videotape Testimony, plus attachments) is the "Extraordinary Showing" exchanged by TBF on August 10, 1993, and rejected by the Presiding Judge at the prehearing conference on August 12, 1993 (Tr. 132). It is exchanged again here in exhibit form so that it may be identified and go forward with the record in that form. TBF will furnish copies to the court reporter, but will not re-offer these materials into evidence or ask the Presiding Judge to reconsider his prior ruling.

As a final matter, **TBF Exhibit 35** (Testimony of Christopher A. Holt) presents data compiled from certain program logs of WHFT-TV. Copies of the logs used are submitted as Tabs D-H of **TBF Exhibit 32** (Testimony of Michael S. Everett).

Respectfully submitted,


Nathaniel F. Emmons

NFE/jt
Enclosures

cc: James Shook, Esq.
Lewis I. Cohen, Esq.
David A. Honig, Esq.

CERTIFICATE OF SERVICE

I, Nathaniel F. Emmons of the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that on this 19th day of November, 1993, copies of the foregoing "Opposition to Requested Ruling Re Order of Witnesses" were hand-delivered to the following:

The Honorable Joseph Chachkin
Administrative Law Judge
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